

Chief Judge Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH D. GRAHAM,

Defendant.

NO. CR07-0021RSL

FINAL ORDER OF FORFEITURE

THIS MATTER comes before the Court on motion of the United States for entry of a Final Order of Forfeiture with respect to the following asset:

1. A 2005 Ford F150 King Ranch Supercrew truck, license plate A46044X, VIN #1FTPW14585KC33886, seized from Kenneth D. Graham by law enforcement on October 24, 2006.

On July 6, 2007, this Court entered a Preliminary Order of Forfeiture in the above-captioned case forfeiting defendant Kenneth D. Graham's interest in the 2005 Ford F150 King Ranch Supercrew truck, license plate A46044X, VIN #1FTPW14585KC33886.

The above-referenced vehicle was subject to forfeiture pursuant to Title 21, United States Code, Section 853, based on Kenneth D. Graham's guilty plea to Conspiracy to Distribute Oxycodone, as charged in Count 3 of the Information, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), and his agreement to forfeit the vehicle.

1 Pursuant to Title 21, United States Code, Section 853(n), the United States
2 published notice in The Daily Journal of Commerce on August 3, August 10, and August
3 17, 2007. In the publication the United States published notice of the Preliminary Order
4 of Forfeiture and the intent of the United States to dispose of the property in accordance
5 with law. This notice further stated that any person other than the defendant having or
6 claiming an interest in the property was required to file a petition with the Court within
7 thirty (30) days of the final publication of the notice or personal receipt of the notice,
8 whichever was earlier, setting forth the nature of the petitioner's right, title, and interest
9 in the property.

10 On July 30, 2007, the United States sent notice, via certified mail, to Robin and
11 Timothy Kearns, Capital One Auto Finance, and JP Morgan Chase of the intent of the
12 United States to forfeit the asset listed in the Notice of Publication in the criminal case
13 filed against Kenneth D. Graham. The return receipts indicated delivery to Robin and
14 Timothy Kearns on August 3 and 7, 2007, respectively, and both Capital One Auto
15 Finance and JP Morgan Chase on August 2, 2007.

16 All persons and entities believed to have an interest in the vehicle subject to
17 forfeiture were given proper notice of the intended forfeiture.

18 On August 16, 2007, Timothy and Robin Kearns filed a verified claim of
19 ownership with the Court. See Docket No. 33.

20 On October 2, 2007, Chase Auto Finance filed a Petition for Remission of
21 Forfeiture. See Docket No. 35.

22 On December 5, 2007, the United States submitted a Motion and Proposed Order
23 to Conduct Discovery Pursuant to Federal Rule of Criminal Procedure 32.2 and Setting
24 Date for Hearing of Petition of Timothy W. Kearns and Robin Kearns. See Docket No.
25 36. The Court granted the Order on January 4, 2008 setting a hearing date of March 4,
26 2008. See Docket No. 37. To ensure that both Timothy and Robin Kearns received
27 adequate notice, the March 4, 2008 Hearing was rescheduled, by Minute Order, to
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1 March 28, 2008 with the Clerk of Court directed to notify Timothy and Robin Kearns of
2 the hearing via mail delivery. See Docket No. 38.

3 On March 27, 2008, the United States filed a Memorandum for the Ancillary
4 Hearing in support of its position to dismiss Thomas and Robin Kearns' Third Party
5 Petition. See Docket No. 39. The argument set forth in the memorandum was that
6 denial of the Kearns' Petition was proper because they never acquired title, they were not
7 bona fide purchasers for value, and they had knowledge of the underlying violations
8 which formed the basis for the forfeiture.

9 On March 28, 2008, the Court held an Ancillary Hearing as to the Third Party
10 Petitioner claims of Robin and Timothy Kearns. See Minute Entry at Docket No. 40.
11 The Kearns failed to appear before the Court and consequently failed to establish the
12 merits of their claim. The United States moved for the admission of two exhibits - an
13 October 16, 2006 target letter from AUSA Ron Friedman to Kenneth Graham advising
14 Mr. Graham that he was the subject of a Drug Enforcement Administration investigation
15 and a current and certified Certificate of Title from the Washington Department of
16 Licensing showing JP Chase Bank as the legal owner of the truck. See Minute Entry at
17 Docket No. 40.

18 At the hearing, on March 28, 2008, the Government moved to dismiss the Kearns'
19 petition and the Court granted that motion. See Minute Entry at Docket No. 40.

20 On March 28, 2008, in an email to the United States Attorney's Office, Robin
21 Kearns claimed to have not been informed of the Ancillary Hearing. The United States
22 filed a copy of the email on that same date. See Docket No. 41, Letter to the Honorable
23 Robert S. Lasnik from AUSA Richard E. Cohen. The contents of her email also failed to
24 support the Kearns' entitlement claim. Specifically, Robin Kearns stated that the sales
25 transaction was never completed, that neither she nor Timothy Kearns had possession of
26 the vehicle, that she and Timothy Kearns had knowledge that her son would likely be
27 indicted, and that her assumption that the truck would not be seized was based on the fact
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1 that there was still money owing on the lien on the truck. See Docket No. 41. The Court
2 further finds that the notice of the hearing was sufficient.

3 On April 24, 2008, the Government submitted a Stipulated Agreement and
4 Proposed Order to recognize the claim of Chase Auto Finance. See Docket No. 42. The
5 terms of this stipulated agreement allow for the forfeiture and subsequent sale of the
6 vehicle, with the sales proceeds to be paid to satisfy the claim of Chase Auto Financial.
7 The Court signed the Order attached thereto recognizing these terms on April 25, 2008.
8 See Docket No. 43.

9 No other petitioners have come forward to assert an interest in the forfeited
10 property, and the time for doing so has expired.

11 Accordingly, IT IS ORDERED, ADJUDGED and DECREED that the following
12 property is hereby fully and finally condemned and forfeited to the United States in its
13 entirety:

- 14 1. A 2005 Ford F150 King Ranch Supercrew truck, license plate
15 A46044X, VIN #1FTPW14585KC33886, seized from Kenneth D.
Graham by law enforcement on October 24, 2006.

16 The United States Marshals Service is authorized to dispose of the above-listed
17 property in accordance with the law.

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19 The Clerk of the Court is hereby directed to send a copy of this Final Order of
20 Forfeiture to all counsel of record and to send three (3) "raised seal" certified copies to
21 the United States Marshals Service in Seattle, Washington.

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23 Dated this 20th day of May, 2008.

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26 Robert S. Lasnik
27 United States District Judge
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